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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/473,791 12/28/99 HAACK

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EXAMINER

PM82/0404

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GUTMAN, H

ART UNIT

PAPER NUMBER

3612

DATE MAILED:

04/04/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/473,791**

Applicant(s)

**Haack**

Examiner

**Hilary Gutman**

Group Art Unit

**3612**



☒ Responsive to communication(s) filed on Feb 21, 2001

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-53 is/are pending in the application

Of the above, claim(s) 5-7, 12, 13, 18-21, 27, 31-43, 45, 51, and 52 is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-4, 8-11, 14-17, 22-26, 28-30, 44, 46-50, and 53 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Dec 28, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Election/Restriction***

1. It has come to the examiner's attention that after further examination of the elected species, the examiner believes that claims 14, 29, 30, and 53 do not appear to be proper and do not appear to read on the elected species (Figures 1-4, 7-8, and 19-20) but instead appear proper for the species of Figures 9-13, specifically Figures 11-13 and the species of Figures 14-16, specifically since the divider panel of the elected species does not show "at least two living hinges" as claimed (hence the drawing objections and 112/2nd rejections made in the last office action and again in this action). However, since the examiner has already treated these claims in the last office action, these claims will continue to be treated on the merits.

Furthermore, the examiner did not find "submitted proposed corrected drawings" in the amendment (filed 2/21/2001).

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the following features:

the "front wall latch means 85" of page 14;

In Figure 1, the "sidewall 38" as described in the specification on page 9, lines 9, 16, 17, and 18, and page 2, lines 1, 2, and 11.

In Figure 2, the "lower latch means 59" is not clearly shown.

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In Figure 3, the ""horizontal protrusion 55" on page 11, line 18, and "lower latch means 59" on page 11, line 20.

In Figure 4, the "lower latch means 59" is not shown as stated on page 12, lines 1-2.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

In Figure 1, reference numbers 22, 24, 26, and 44. The reference number 44 appears to be pointing to the wheel well shroud and perhaps should instead be 42.

In Figure 17, reference letter "C" is not described.

Figure 18 is not adequately described in the specification. In addition, reference letter "D" is not described.

Correction is required.

4. The drawings are objected to because:

Figure 3 appears to be incorrect and misleading. Figure 3 appears to be a view from the front of the vehicle looking back towards the rear end of the vehicle since the uniform closure channel is behind the lock means 58. However, the sidewall 36 is shown and labeled and is normally located on the left side (as seen in Figure 1) of the vehicle when standing at the rear of

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the vehicle and facing forwards. If this were the case the uniform closure channel 78 would be located in front of the lock means 58 and not behind it. To remedy this, one might change reference number 36 to 38 or draw the uniform closure channel 78 in front of lock means 58.

In Figure 1, the lead lines extending from reference number 76 to the horizontal protrusions stop short of the actual protrusions.

In Figure 11, there is a lead line between reference numbers 36 and 50 towards the top of the figure which has no reference number attached but appears to be pointing to one of the wheel well shrouds. Perhaps this lead line should have reference number 42 at the end of it or removed altogether.

In Figures 14 and 15, another embodiment is illustrated but it is unclear how the storage compartments of these figures are related. It appears from Figure 15 that the back end of the storage compartment should be open since no panel or side wall completes the storage compartment. However, in Figure 14, the storage compartment appears complete and there appears to be some unknown panel at the back to close the storage compartment. The same problem appears to apply to Figures 14 and 16.

In Figures 19 and 20, lead line extending from the reference number 56 points to what appears to be perhaps the living hinge 52 and not the divider panel 56.

Correction is required.

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5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the feature(s) canceled from the claim(s).

The “two living hinges” on the divider panel of claims 14, 29, 30, and 53.

The “living hinges” enabling the divider panel to be raised vertically at one hinge and raised horizontally at the other, of claims 14, 29, 30, and 53.

The “storage compartment” of the “enclosed storage compartment” of claim 28.

The “storage compartment” of the “enclosed storage compartment” of claim 29.

The “horizontally divided locking means” of claim 50.

No new matter should be entered.

6. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

### *Specification*

7. The disclosure is objected to because of the following informalities:

On page 6, line 20, it is unclear why in the phrase “Side wall” the letter “s” is capitalized and perhaps this phrase should be “side wall” in this instance and throughout the specification.

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On page 11, lines 16-19, the phrase "pressure is applies to a point along divider panel 56 at horizontal protrusion 55" is unclear. As seen in Figure 1, the horizontal protrusion 55 is not located on or near divider panel 56 and therefore it is unclear how pressure is applied to remove the divider from the lock means. On lines 19-20, the phrase "divider panel 56 is secured into place by lower latch means 59" is unclear where the lower latch means is located with respect to the living hinge 52 and since the divider panel 56 is already secured to the liner 20 by the living hinge 52 it is unclear why the lower latch means 59 is needed. In addition, in general it is unclear whether the uniform closure channel 78 blocks or hinders the movement of the divider panel when it is being moved from the horizontal storage position to the vertical position.

On page 12, lines 1-2, the "lower latch means 59" is not shown in Figure 4 as stated.

On page 16 of the amendment, line 13, "Side wall 36 or liner Side wall 38" is stated but both instances of "Side" should be "side". On line 17, "Side" should be "side" and on line 18, "Side" should be "side". Furthermore, the examiner would like to request that all instances of "Side" in the specification be changed to "side" where appropriate unless the applicant can give some explanation as to why "Side" is capitalized.

On page 16, lines 9-13 are unclear specifically with respect to the enclosure panel 92, where it is located, and how it moves. Furthermore, Figure 18 was never fully or adequately described as to what's going on.

Appropriate correction is required.

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8. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

*Claim Objections*

9. Claims 11 and 30 are objected to because of the following informalities:

In claim 11, line 2, "of" should be deleted.

In claim 30, line 1, "having of the type having" should just be "having".

Also it should be noted that in claims 14, 28, 29, and 53, the language, "for a truck bed liner", "for a vehicle", and "for a vehicle liner" is functional recited and therefore is not given much weight.

Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-4, 8-11, 14-17, 22-26, 28-30, 44, 46-50, and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.



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Claim 1 recites the limitation "a raised position" in lines 3 and 4. There is insufficient antecedent basis for these limitations in the claim.

Claim 4 recites the limitation "the bottom" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitations "the bottom" in line 5, "the horizontal axis" in line 6 and "them" in line 7. There is insufficient antecedent basis for these limitations in the claim. In addition on line 5, "the protrusions" should apparently be "the at least two protrusions".

Claim 11 recites the limitations "the bottom" in line 5, "the horizontal axis" in line 6, and "them" in line 7. There is insufficient antecedent basis for these limitations in the claim. Also on line 5, "the protrusions" should be "the at least two protrusions".

Claim 15 recites the limitation "a raised position" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 24 recites the limitations "the bottom" in line 5, "the horizontal axis" in line 6 and "them" in line 7. There is insufficient antecedent basis for these limitations in the claim. In addition on line 5, "the protrusions" should apparently be "the at least two protrusions".

Claim 25 recites the limitations "the bottom" in line 5, "the horizontal axis" in line 6, and "them" in line 7. There is insufficient antecedent basis for these limitations in the claim. Also on line 5, "the protrusions" should be "the at least two protrusions".

Claim 28 recites the limitation "a raised position" in line 3. There is insufficient antecedent basis for this limitation in the claim. Also it is unclear how "An enclosed storage compartment"

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can have a "storage compartment" unless the "storage compartment" is separate and within the "enclosed storage compartment, which does not appear to be the case.

In claim 44, line 1, it is unclear what is meant by "co-joined" and furthermore the "co-joined members" are unclear as to which elements or features this phrase is referring.

In claim 46, line 1, it is unclear how the "improvement" is "molded into" the truck bed.

In claim 48, line 1, it is unclear how or why the divider is "cut" into the bed and furthermore it should be noted that the patentability of a product does not depend on its method of production (MPEP 2113).

Claim 49 recites the limitations "the horizontal axis" in lines 5-6 and "them" in line 6. There is insufficient antecedent basis for these limitations in the claim. In addition on line 5, "said protrusions" should be "said at least two protrusions".

In claim 50, line 1, the "horizontally divided locking means" are unclear. Specifically it is unclear whether the "locking means" are the same as the "securing means" described in the specification. Furthermore, the "locking means" do not appear to be shown.

Claim 14 recites the limitation "horizontal position" in line 4. There is insufficient antecedent basis for this limitation in the claim. On line 3, "the living hinges" should be "the at least two living hinges".

In claim 29, it is unclear how "An enclosed storage compartment" can have a "storage compartment" unless the "storage compartment" is separate and within the "enclosed storage compartment, which does not appear to be the case. On line 3, "the living hinges" should be "the

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at least two living hinges". Claim 29 recites the limitation "horizontal position" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 30 recites the limitation "horizontal position" in line 6. There is insufficient antecedent basis for this limitation in the claim. On line 5, "at least two" should be inserted before "living".

Claim 53 recites the limitation "horizontal position" in line 4. There is insufficient antecedent basis for this limitation in the claim. On lines 2-3, "the living hinges" should be "the at least two living hinges".

### ***Double Patenting***

12. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

13. Applicant is advised that should claim 14 be found allowable, claims 29 and 53 and possibly claim 30 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof.

When two claims in an application are duplicates or else are so close in content that they both

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cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

14. Applicant is advised that should claim 1 be found allowable, claim 15 may be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

15. Claims 44 and 46-50 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 3-5, and 7-8 of prior U.S. Patent No. 6015178. This is a double patenting rejection.

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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17. Claims 1, 4, 8, 15, and 22, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Yudenfreund.

Yudenfreund discloses a storage compartment in a vehicle, such as a station wagon or inherently a truck bed liner, comprising a hingedly affixed divider panel 15 (Figure 5) that forms a vertical wall when in a raised position (Figure 2) and a hingedly affixed enclosure panel 19 that forms a horizontal cover member when in a raised position. The divider and enclosure panels are positioned such that when in a raised position they generally can form an enclosed compartment. The divider panel is located in the bottom of the vehicle or truck bed liner. The divider and enclosure panels each have three free edges and a fourth edge comprising a hinge means.

Yudenfreund further discloses the compartment comprising a base panel 12 having a first side and second side and wherein the enclosure panel 19 is releasably affixed to the first side of the base panel when the enclosure panel is not in the raised position

Yudenfreund also discloses an enclosed storage compartment for a vehicle or inherently for a truck bed liner comprising an integrated divider panel 15 having at least two hinges located at predetermined locations on the divider panel. The hinges enable the divider panel to be raised into a vertical position at one of the at least two hinges and a horizontal position at the second of the at least two hinges

Yudenfreund discloses an enclosed storage compartment for a vehicle comprising a hingedly affixed divider panel 15 that forms a vertical wall when in a raised position and an

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enclosure panel 19 that forms a horizontal cover member when in a raised position. The divider and enclosure panels are positioned generally adjacent to one another.

18. Claims 1-5, 8-10, 14-17, 22-24, 28-30, and 53, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by <sup>Hollenbaugh, Sr.</sup> ~~Yudenfreund~~.

Hollenbaugh, Sr. discloses a storage compartment in a vehicle or truck bed liner comprising a hingedly affixed divider panel (seen in Figure 4) that forms a vertical wall when in a raised position and a hingedly affixed enclosure panel 20 that forms a horizontal cover member when in a raised position. The divider panel and the enclosure panel 20 are positioned such that when in a raised position they form an enclosed compartment.

The compartment further includes divider panel securing means 50, for positioning and securing the divider panel, and enclosure panel securing means 50, for positioning and securing the enclosure panel. These securing means 50 can be Velcro, snaps, or other fasteners.

The divider panel is located in the bottom of the truck bed liner.

The divider and enclosure panels each have three free edges and a fourth edge comprising a hinge means, such as a living hinge

Hollenbaugh, Sr. also discloses an enclosed storage compartment for a vehicle or truck bed liner comprising an integrated divider panel (Figure 4) having at least two living hinges located at predetermined locations on the divider panel. The living hinges enable the divider panel to be raised into a vertical position at one of the at least two living hinges and a horizontal

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position at the second of the at least two living hinges, generally at 38. The compartment also includes panel securing means 50, whereby, the divider panel can be positioned and secured to form a trunk storage compartment with the bottom and an adjacent side wall.

Hollenbaugh, Sr. discloses an enclosed storage compartment for a vehicle comprising a hingedly affixed divider panel that forms a vertical wall when in a raised position and an enclosure panel that forms a horizontal cover member when in a raised position. The divider and enclosure panels are positioned adjacent to one another and secured into place, with Velcro, snaps or other fasteners 50, forming an enclosed compartment.

The divider panel securing means 50 comprises at least two protrusions 30 (as seen in Figures 3 and 4) extending outwardly from each of a first side wall and a second side wall of the bed liner at a predetermined point in the first and second side walls such that the protrusions maintain the divider panel in a 90 degree angle with respect to the bottom when the divider panel is in a vertical position. The protrusions being spaced apart from one another along the horizontal axis such that the divider panel can be positioned between the protrusions.

### *Claim Rejections - 35 USC § 103*

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollenbaugh, Sr. in view of Heft.

Hollenbaugh, Sr. discloses divider panel securing means 50 generally comprising two protrusions 30 (as seen in Figures 3 and 4) extending outwardly from each of a first side wall and a second side wall of the bed liner at a predetermined point in the first and second side walls such that the protrusions maintain the divider panel in a 90 degree angle with respect to the bottom when the divider panel is in a vertical position. Furthermore, Hollenbaugh, Sr. discloses the protrusions being spaced apart from one another along the horizontal axis such that the divider panel can be positioned between the protrusions. Hollenbaugh, Sr. also discloses Velcro, snaps, or other fasteners located along adjacent edges of the panels.

Hollenbaugh, Sr. does not specifically disclose or show enclosure panel securing means comprising protrusions.

Heft discloses a storage compartment, having a hingedly affixed divider panel 63 and a hingedly affixed enclosure panel 73. The divider and enclosure panels can be positioned to form an enclosed compartment. The storage compartment further includes divider panel securing means and enclosure panel securing means. The divider panel has two hinges at predetermined locations on the divider panel. Further, the storage compartment comprises a base panel 185 having first and second sides. The base panel is affixed to the enclosure panel. The divider and enclosure panels are adjacent to one another. The enclosure panel securing means (Figure 12)



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comprises a left and right horizontal "protrusion" support assemblies 87 (in a first embodiment) or "protrusions 227 (in a second embodiment) on either side of the vehicle or truck bed extending outwardly from each of a first side wall and a second side wall of the bed at a predetermined point in the first and second side walls. The assemblies 87 or 227 include L-shaped or channel-shaped members with first and second legs 89 and 91 (first embodiment) or first and second legs 235 and 239 (in the second embodiment). In the first embodiment, a latch assembly 85 helps to further secure the enclosure panel. In the second embodiment, the protrusions are spaced apart from one another to form a closure channel to receive and secure the enclosure panel between the horizontal protrusions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make channel-shaped protrusions as taught by Heft in the side walls of the liner/storage compartment of Hollenbaugh, Sr., in order to better secure the enclosure panel.

### ***Response to Arguments***

21. Applicant's arguments with respect to claims 1-4, 8-11, 14-17, 22-26, 28-30, 44, 46-50, and 53 have been considered but are moot in view of the new ground(s) of rejection.

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*Conclusion*

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references show other bed liners, storage compartments, and truck bed similar to that of the current invention.

23. Any inquiry concerning this communication from the examiner should be directed to Hilary L. Gutman whose telephone number is (703) 305-0496.

24. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

**or faxed to:**

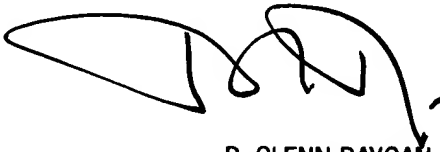
(703) 305-3597, (for formal communications intended for entry)

**or:**

(703) 308-3297, (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT").

hlg

March 28, 2001

  
D. GLENN DAYOAN 3/31/01  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600